

Home > Businesses > Help & Resources > Legal Library > Directives > Directives - By Decade > (2000-2009) Directives >

SEARCH

Select an area to search

Search

Directive 02-9: Optional Insurance Charges in Motor Vehicle Rentals

Introduction: In connection with a motor vehicle lease or rental,^[1] an option to purchase various types of insurance coverage for an additional charge may be offered. The Department has previously announced rules pertaining to mandatory insurance,^[2] fuel, excise and registration fees charged in connection with leases and rentals of motor vehicles in 830 CMR 64H.25.1(9).^[3] The Department has also announced, in DD 97-4, rules pertaining to optional insurance charges in connection with leases of motor vehicles for periods of one year or more. The purpose of DD 02-9 is to clarify the rules for calculation of tax on vehicle rentals when additional optional insurance is purchased by the renter of the vehicle.

Issue: When a motor vehicle is rented in Massachusetts for a period of less than one year, are separately stated charges for optional insurance^[4] included in the rental charges subject to tax?

Directive: When a motor vehicle is rented in Massachusetts for a period of less than one year, separately stated charges for optional insurance are excluded from the rental charges subject to tax. All other charges, except sales taxes and the Convention Center Financing Surcharges, where applicable,^[5] are included in the total lease or rental charges subject to tax within the meaning of 830 CMR 64H.25.1(9).

Discussion of Law:

Massachusetts imposes an excise upon all retail sales of tangible personal property and telecommunications services in Massachusetts by a vendor unless otherwise exempt. The definition of "sale" includes a transfer for consideration of title or possession, or both, including leases and rentals. Excluded from the definition of a taxable retail sale are "professional, insurance, or personal service transactions which involve no sale (of tangible personal property) or which involve sales (of tangible personal property) as inconsequential elements for which no separate charges are made." G.L. c. 64H, § 1.

For purposes of DD 02-9, "optional insurance" refers to coverage provided by third party insurance carriers that is sold in conjunction with a motor vehicle rental contract. The additional optional insurance may cover potential losses sustained by the renter of the vehicle for personal injuries resulting from an accident, personal effects that may be damaged or stolen from the vehicle during the term of the rental contract, or supplemental liability coverage beyond the state's minimum requirements. "Insurance" does not include separately stated charges for "Collision Damage Waiver," defined in G.L. c. 90, § 32E ½ as "any contract or contractual provision whether separate from or a part of a rental agreement, whereby the rental company agrees, for a charge, to waive any or all claims against the renter for damages to or loss of the rented private passenger automobile during the term of the rental agreement."

The taxable "sales price" of tangible personal property, including leases and rentals of such property, includes "the total amount paid by a purchaser to a vendor as consideration for a retail sale, valued in money or otherwise. In determining the sales price . . . there shall be included any amount paid for services that are part of the sale" G.L. c. 64H, § 1.

Generally, if a service must be purchased in connection with tangible personal property, it is considered "part of the sale" within the meaning of G.L. c. 64H, § 1, and the entire charge to the retail customer is subject to tax. See LR 81-10 (separately stated refueling service charge if rental

vehicle is returned with less than a full tank of gas is subject to tax). Optional services sold in connection with tangible personal property that are readily separable from the taxable sale may be treated as if sold separately and are therefore not subject to tax. See 830 CMR 64H.1.3(4)(h) and *Information Services, Inc. v. Commissioner of Revenue*, 48 Mass. App. Ct. 197 (1999).

DOR Directive 97-4, "Sales and Use Tax on Motor Vehicle Leases," excludes from the sales price subject to tax the following optional services sold in connection with the lease of a vehicle for one year or more, provided the charge is separately stated: extended warranty/service contracts, "roadside assistance" contracts, and life, accident or health insurance. See DD 97-4, Directives 2(a) and 2(b). Effective upon issuance of this Directive, and for all open tax periods, separately stated charges for *optional* insurance on motor vehicle rentals of less than one year are also excluded from the sales price subject to tax.

Vendors that have collected and remitted tax on optional insurance charges not subject to tax under DD 02-9 may file an application for abatement on Form CA-6 within the time limitations of G.L. c. 62C, § 37, if the vendor provides proof that it has repaid its customers the amount of sales taxes for which the abatement is requested.

/s/ Alan L. LeBovidge

Alan LeBovidge,
Commissioner of Revenue

ALL:DMS:ecl

August 26, 2002

DD 02-9

137770

[1] For purposes of DD 02-9, a lease is a transfer of possession of a motor vehicle for a consideration for a period of one year or more. A rental is a transfer of possession of a motor vehicle for a consideration for a period of less than one year.

[2] An example of mandatory insurance is the required liability coverage under a rental contract to satisfy the state's minimum financial responsibility limits.

[3] As promulgated 10/31/86 (subsequent amendments involved other issues).

[4] Optional insurance coverage refers to coverage provided by third party insurance carriers that is sold in conjunction with the motor vehicle rental contract. Optional insurance coverage is marketed under various names, e.g., "Personal Accident Insurance," "Personal Effects Coverage," and "Liability Insurance Supplement." For purposes of DD 02-9, optional insurance coverage does not refer to contractual provisions between the parties regarding limits of liability in the event of loss or damage to the vehicle, commonly called "Collision Damage Waiver," "Loss Damage Waiver," or "Partial Damage Waiver" for which there is an additional separately stated charge.

[5] See TIR 00-2.